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3-19-04

DOCKET NO. 2004-1000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Robert Michael Chavez

Serial No.: 09/807,082

Filed: October 6, 1998

For: DIGITAL ELECTIONS NETWORK SYSTEM WITH ONLINE VOTING AND
POLLING

Art Unit: 3623

Examiner: Johnna R. Stimpak

DECLARATION UNDER 37 C.F.R. § 1.131

Honorable Commissioner of Patents and Trademarks
Washington, DC 20231

Sir/Madam:

Rule 131 provides an applicant with the ability to antedate a reference by establishing facts showing prior invention of the subject matter. The purpose of a 131 affidavit is to overcome the effective date of a reference in support of a rejection. To show prior invention, the applicant must provide facts sufficient to establish one of the following: (1) actual reduction to practice of the invention prior to the effective date of the prior art reference, or (2) conception of the invention prior to the effective date of the reference coupled with diligent completion of the invention of the invention beginning prior to the reference date and culminating subsequent to the reference date (actually or constructively). *See In re Eickmeyer.*

In this affidavit, the applicant provides facts and exhibits sufficient to establish the conception of the invention above-captioned application prior to the effective date of the Challenger, et al. reference coupled with diligent constructive completion of the invention as shown by applicants timely filing of provisional and utility patent applications.

Purpose of Declaration

1. I, Robert Michael Chavez, am the named inventor in the above-captioned application. I am presently an employee of the We The People Foundation.
2. This declaration of mine is submitted to establish completion, before December 30, 1997 of subject matter claimed in the above-captioned application. I understand these dates to be the effective prior-art dates of U.S. Patent 6,081,7093 issued to Challenger, et al. I refer to the date as "the critical date."
3. I understand these publications are cited in an Office Action dated September 29, 2003, issued in the above-captioned application.

Facts and Documentary Evidence

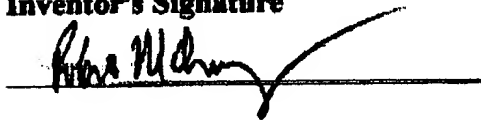
4. The attached document (Exhibit A) evidences that a **DIGITAL ELECTIONS NETWORK SYSTEM WITH ONLINE VOTING AND POLLING**, as claimed in the application, was characterized in the United States prior to the critical dates.
5. Before the critical dates, my work at the We The People Foundation included the conceptual and actual creation of the digital election network claimed in the above-captioned application.
6. In the course of this work, I directed the production of the digital election network claimed in the above-captioned application.
7. My work on the digital election network claimed in the above-captioned application is also described in United States Patent Application No. 60/103,279 with a filing date of October 6, 1998. Exhibit A shows conception of the invention at substantially the same time as the effective date of the reference coupled with diligent constructive completion of the invention. *See In re Eickmeyer*.
8. Prior to the critical dates, I founded the We the People Foundation in April of 1997, which foundation was then involved in the drafting of an initiative measure to be submitted directly to the voters of California which included the conceptual creation of the digital election network claimed in the above-captioned application.
9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that

these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Inventor:

Full name of inventor: Robert Michael Chavez

Inventor's Signature

A handwritten signature in dark ink, appearing to read "Robert Michael Chavez", is written over a horizontal line.

Date: March 8, 2003

Country of Citizenship: USA

Residence and Post Office Address

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STATEMENT OF THE SUBSTANCE OF THE INTERVIEW

Honorable Commissioner of Patents and Trademarks
Washington, DC 20231

Sir/Madam:

A telephonic interview was conducted on 25 February, 2004 with the participants being Johnna R. Stimpak (assigned patent examiner), Matthew T. Welker (Agent of Record), and John Hayes (supervising, primary examiner).

Examiner Stimpak provided priority verification. The application properly claims priority from U.S. Provisional Patent Application SN 60/103,279, entitled DIGITAL ELECTIONS NETWORK SYSTEM WITH ONLINE VOTING AND POLLING, filed on October 6, 1998. Applicant has reserved the right to submit a Rule 1.131 affidavit to swear behind the Challenger reference is proper documentation can be found to show completion of the invention.

No prior art was discussed and no substantive discussion of the claim objections and rejections was made, although the examiner provided verification of 34 pending claims. Papers

submitted on April 6, 2001 by the inventor attempting to make changes to the specification and claims are present in the file wrapper, but have not be considered by the examiner.

Respectfully submitted,



MATTHEW T. WELKER
REGISTRATION NO. 53,756

Date: March 8, 2003
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916/341-8020 Fax

Date: 2/27/04Cover + 15 PagesTo: Robert Chavez
(210) 843-5626
(210) 223-1945 (fax)From: Abby Reynaga Phone: 341-8000Note: Copy of your 1998 Initiative -
per your request.If pages are missing, please call: Abby Phone: (916) 341-8000

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January 21, 98

Dear Ben,

please feel free to give my address
to anyone who is interested in assisting
We the People Foundation in the final drafting of
this measure. All organizations interested in submitting
information, should contact me at:

We the People Foundation.
3618 Barrington Dr.
San Antonio TX
78217.

Sincerely,

Robert Perry

work 210-656-1586
fax 210-654-5561

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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO
THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of ____ County (or City and County), hereby propose amendments to the Elections Code and the Government Code, relating to voting, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments read as follows:

SECTION 1. Section 107 is added to the Elections Code, to read:

107. (a) The Secretary of State shall design, develop, and implement a digital network system for the collection, storage, and processing of electronically generated and transmitted digital messages that permits electors to sign any petition, and vote in any election,

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in accordance with the following:

(1) The identity of the person submitting a digital message shall be established, and the submission authenticated as being the communication of this identified person, by the use of that person's digital signature, as defined in subdivision (d) of Section 16.5 of the Government Code. The Secretary of State may approve thumbprint readers or other methods for establishing the identity of the person accessing the system if the secretary determines that the method is appropriate for the system and that the security of the system can be maintained if the method is used.

(2) Each message may be originated in an electronic device of a kind approved by the Secretary of State, if the message is readable by an industry standard digital file server that shall be designated by the Secretary of State as the state electoral server. The Secretary of State may approve any originating device for this purpose if the secretary determines that device is appropriate for the system and that the security of the system can be maintained if the device is used.

(3) The Secretary of State shall establish procedures for the collection, storage, and verification of digital signatures for the purpose of authenticating votes cast and signatures collected for a petition.

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(b) No person may willfully do any of the following with regard to the system described in subdivision (a): destroy data in the system; interfere with the operation of the system; transmit false or inauthentic data under the system; access the system for any purpose by using the digital signature of another person without the consent of that person; or use the digital signature of another person to sign a petition or to vote. A violation of this subdivision is punishable by a fine of three thousand dollars (\$3,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) The Secretary of State shall provide each legally qualified candidate for elective office, as determined pursuant to Sections 13 and 13.5, and each committee, as defined in Section 82047.5 of the Government Code, supporting or opposing a ballot measure with a reasonable amount of space on the state electoral server to store and make accessible multimedia documents, including text, graphics, audio, video, and other forms of information that the Secretary of State determines to be appropriate, as a means of communicating with the electorate and providing the public with a method to obtain information about the candidates and ballot

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measures and to communicate their own views and other comments to candidates or committees. Generally accepted industry standards shall be ascertained and employed in providing for the formatting, collection, and storage of the documents to be used for this purpose and in making them accessible through public computer networks and online services pursuant to this subdivision. The Secretary of State shall establish procedures for determining the identity of the sender and the authenticity of the multimedia documents to be posted on the state electoral server.

(d) The Secretary of State shall make space available on the state electoral server to display vote tallies for the candidates and measures that are voted on in each election. Generally accepted industry standards shall be ascertained and employed in providing the vote information, and in making it accessible through public computer networks and online services pursuant to this subdivision.

(e) The Secretary of State may research, design, develop, purchase, and deploy the hardware, software, network resources, and training for his or her staff, county election staff, and the general public as necessary to implement this section. The Secretary of State may contract with one or more private vendors to

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provide all or part of the data collection, storage, processing, encryption, decryption, authentication, and network resources required to implement this section.

SEC. 2. Section 3024 is added to the Elections Code, to read:

3024. A registered voter may vote in any election by means of the digital network system authorized by Section 107 during the same time period that ballots are permitted to be cast at the polls in the election.

SEC. 3. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot, or by the digital network system specified in Sections 107 and 3024. There shall be provided, at each polling place, at each election at which public officers are to be voted for, one form of ballot for all candidates for public office, listing all candidates for public office, in accordance with subdivision (b).

(b) At such each primary elections election, each voter shall be furnished an official primary ballot. The official primary ballot shall contain the names of all candidates for nonpartisan and partisan offices and measures to be voted for at the primary election.

SEC. 4. Section 16.5 of the Government Code is amended to read:

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16.5. (a) In any written communication with a public entity, as defined in Section 811.2, in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- (1) It is unique to the person using it.
- (2) It is capable of verification.
- (3) It is under the sole control of the person using it.
- (4) It is linked to data in such a manner that, if the data are changed, the digital signature is invalidated.
- (5) It conforms to regulations adopted by the Secretary of State. Initial regulations shall be adopted no later than January 1, 1997. In developing these regulations, the secretary shall seek the advice of public and private entities, including, but not limited to, the Department of Information Technology, the California Environmental Protection Agency, and the Department of General Services. Before the secretary adopts the regulations, he or she shall hold at least one public hearing to receive comments.

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(b) The use or acceptance of a digital signature shall be at the option of the parties, except that the Secretary of State and all county elections officials shall permit the use of digital signatures for the purposes of petition signing of all types allowed by the Elections Code and the California Constitution, and voting in any election. Nothing Except as specified in this subdivision, nothing in this section shall require a public entity to use or permit the use of a digital signature.

(c) Digital signatures employed pursuant to Section 71066 of the Public Resources Code are exempted from this section.

(d) "Digital signature" means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

SEC. 5. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.